

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/18/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-009841

FILED: _____

ERIC BUNCH

ERIC BUNCH
12449 N 137TH WAY
SCOTTSDALE AZ 85259-0000

v.

IAN KEEGAN

IAN KEEGAN
9434 N 122ND PLACE
SCOTTSDALE AZ 85259-6020

REMAND DESK CV-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal of an order continuing an Injunction Against Harassment after a hearing pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has reviewed Appellant's memorandum; however, Appellant provided no tapes, transcripts of the trial court proceedings for this Court's review.

In the case at hand, Appellant did not order a record, nor did this court receive a transcript or tape of the proceedings from the court below. The rules clearly require that a transcript of the record of the proceedings shall be prepared in all cases appealed to the Superior Court, except where other

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methods are established by Superior Court Local Rules.¹ When matters are not included in the record on appeal, the missing portion of the record is presumed to support the decision of the trial court.² However, even where no transcript is forwarded on appeal, this court is required to consider questions of law presented by the record.³

Appellant claims the trial court made its ruling on impermissible grounds, that a specific photograph was "hearsay within hearsay", and that the judge had insufficient grounds on which to base his opinion.⁴ First of all, Appellant correctly observes that *hearsay* is ". . . a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."⁵ However, the definition is incomplete because the Appellant fails to take the next step: that a *statement* is ". . . (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion."⁶

Because a photograph involves no statement, by definition, it cannot be hearsay. Therefore, even on the presentation of a full court record, Appellant would be unable to demonstrate that a photograph could ever constitute hearsay. If the trial record would have shown, as Appellant claims, that the court declared a photograph "hard evidence",⁷ then it undoubtedly ruled correctly in determining the photograph to be admissible.

As to all other arguments regarding the sufficiency of the evidence to support the trial court's ruling, this Court must

¹ Rule 11(e)(2), Superior Court Rules of Appellate Procedure-Civil.

² *State v. Mendoza*, 181 Ariz. 472, 474, 891 P.2d 939, 941 (1995); *Baker v. Baker*, 183 Ariz. 70, 72, 900 P.2d 764, 766 (1995); *State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982); *In re Mustonen's Estate*, 130 Ariz. 283, 284, 635 P.2d 876, 877 (App.1981).

³ *Smith v. Smith*, 115 Ariz. 299, 564 P.2d 1266 (App. 1977); *Orlando v. Northcutt*, 103 Ariz. 298, 441 P.2d 58 (1968).

⁴ Appellant's memorandum, pp. 3-4.

⁵ Appellant's memorandum, p. 3, citing Ariz. R. Evid. 801(c).

⁶ Ariz. R. Evid. 801(c).

⁷ Appellant's memorandum, p. 3.

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presume the missing record supports the trial court's rulings and judgment.⁸

IT IS THEREFORE ORDERED affirming the judgment and order of the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this case to the Scottsdale City Court for all future and further proceedings.

⁸ See footnote 2, supra.
Docket Code 019